

Videotape Deposition of ELMER BORCHARDT, 7/2/08

Page 1	Page 3
<p>IN THE CIRCUIT COURT OF MILWAUKEE COUNTY STATE OF WISCONSIN</p> <hr/> <p>COLLEEN LEMBERGER, Individually and as Personal Representative of the Estate of Steven Lemberger,</p> <p>Plaintiff,</p> <p>vs. Case No. 05-CV-010416</p> <p>AMERICAN STANDARD, INC., et al.,</p> <p>Defendants.</p> <hr/> <p>Videotape Deposition of ELMER BORCHARDT Wednesday, July 2nd, 2008</p> <p>10:00 a.m.</p> <p>at</p> <p>W268 N2161 Shooting Star Road Pewaukee, Wisconsin Reported by Tammy R. O'Neal, RPR</p>	<p>1 APPEARANCES:</p> <p>2 EMILE BANKS & ASSOCIATES, LLC, by</p> <p>3 Ms. Ellen L. Spahr</p> <p>4 1200 North Mayfair Road, Suite 290</p> <p>5 Milwaukee, Wisconsin 53226</p> <p>6 Appeared on behalf of Hennes Services, Inc.</p> <p>7 QUARLES & BRADY, by</p> <p>8 Mr. Andrew G. Frank</p> <p>9 411 East Wisconsin Avenue</p> <p>10 Milwaukee, Wisconsin 53202-4497</p> <p>11 Appeared on behalf of The Holming Company.</p> <p>12 BOWMAN & BROOKE, LLP, by</p> <p>13 Mr. David N. Lutz</p> <p>14 150 South Fifth Street, Suite 3000</p> <p>15 Minneapolis, Minnesota 55402</p> <p>16 Appeared on behalf of General Motors.</p> <p>17 Also Present: Mark Lyle, CLVS, Videographer</p> <p>18</p> <p>19 EXAMINATION</p> <p>20</p> <p>21 BY MR. TERSCHAN: 4</p> <p>22 BY MR. MCCOY: 34</p> <p>23 BY MR. TERSCHAN: 44</p> <p>24 BY MR. MCCOY: 45</p> <p>25 EXHIBITS</p> <p>EXHIBIT NO. PAGE IDENTIFIED</p> <p>1 Document re: job 3478 37</p> <p>2 Document re: job 4199 38</p> <p>(Exhibits 1 and 2 attached to original transcript and transcript copies. Exhibit 501 also attached to transcript and copies. Exhibits 502 - 505 referred to were marked previously and were retained by Attorney Terschan.)</p>
Page 2	Page 4
<p>1 Videotape Deposition of ELMER BORCHARDT, a</p> <p>2 witness in the above-entitled action, taken at the</p> <p>3 instance of the Defendants, pursuant to Chapter 804</p> <p>4 of the Wisconsin Statutes, pursuant to notice, before</p> <p>5 Tammy R. O'Neal, RPR and Notary Public, State of</p> <p>6 Wisconsin, at W268 N2161 Shooting Star Road,</p> <p>7 Pewaukee, Wisconsin, on the 2nd day of July, 2008,</p> <p>8 commencing at 10:00 a.m. and concluding at 11:09 a.m.</p> <p>9</p> <p>10 APPEARANCES:</p> <p>11 CASCINO VAUGHAN LAW OFFICES, LTD., by</p> <p>12 Mr. Robert G. McCoy</p> <p>13 220 South Ashland</p> <p>14 Chicago, Illinois 60607</p> <p>15 Appeared on behalf of Plaintiff.</p> <p>16 SAMSTER, KONKEL & SAFRAN, S.C., by</p> <p>17 Mr. Gordon R. Leech</p> <p>18 1110 North Old World Third Street Suite 405</p> <p>19 Milwaukee, Wisconsin 53203</p> <p>20 Appeared on behalf of Plaintiff.</p> <p>21 OTJEN, VAN ERT & WEIR, S.C., by</p> <p>22 Ms. Laurie J. McLeRoy</p> <p>23 700 North Water Street, Suite 800</p> <p>24 Milwaukee, Wisconsin 53202</p> <p>25 Appeared on behalf of Bendix Commercial Vehicle Systems, LLC, and Honeywell International, Inc.</p> <p>TERSCHAN, STEINLE & NESS, by</p> <p>Mr. Frank R. Terschan</p> <p>309 North Water Street, Suite 215</p> <p>Milwaukee, Wisconsin 53202</p> <p>Appeared on behalf of L&S Insulation Company, Inc.</p>	<p>1 TRANSCRIPT OF PROCEEDINGS</p> <p>2 ELMER BORCHARDT, called as a witness</p> <p>3 herein, having been first duly sworn on oath, was examined</p> <p>4 and testified as follows:</p> <p>5 EXAMINATION</p> <p>6 BY MR. TERSCHAN:</p> <p>7 Q Could you please tell the jury your full name?</p> <p>8 A Elmer H. Borchardt.</p> <p>9 Q And what's your business address?</p> <p>10 A 616 South 89th Street, Milwaukee.</p> <p>11 Q Can you tell the jury your date of birth?</p> <p>12 A 12/9/25.</p> <p>13 Q And what's your occupation? What do you do for a</p> <p>14 living?</p> <p>15 A I estimate, and operate L&S Insulation.</p> <p>16 Q And how long have you been doing -- how long have you</p> <p>17 been working for L&S Insulation Company?</p> <p>18 A January of 1950.</p> <p>19 Q You have not owned the company since 1950; is that</p> <p>20 correct?</p> <p>21 A No.</p> <p>22 Q When did you become the owner of L&S Insulation?</p> <p>23 A Some years between '50 and '60 something. Part</p> <p>24 owner.</p> <p>25 Q How long have you lived with your permanent residence</p>

1 (Pages 1 to 4)

Page 5	Page 7
<p>1 in the Milwaukee area?</p> <p>2 A All my life.</p> <p>3 Q Now, we're taking this deposition at your home; is</p> <p>4 that correct?</p> <p>5 A Yes.</p> <p>6 Q You've had some health issues we're not going to go</p> <p>7 into in great detail, but you've had some health</p> <p>8 issues that may prevent you from actually attending</p> <p>9 the trial; is that correct?</p> <p>10 A Yes.</p> <p>11 MR. MCCOY: Objection to that line of</p> <p>12 questioning. I think it's just a relevance objection</p> <p>13 so it's probably reserved anyway.</p> <p>14 BY MR. TERSCHAN:</p> <p>15 Q Could you tell the jury a little bit about the</p> <p>16 history of L&S Insulation Company, Inc. How did it</p> <p>17 start?</p> <p>18 A L&S originated in 1936, small operation, satellite of</p> <p>19 Illinois Roofing and Insulation, same owners. And</p> <p>20 L&S -- when I started, they had like one roofing</p> <p>21 crew, one corrugated crew, two, three pipe coverers.</p> <p>22 But I wasn't associated with them. I started out as</p> <p>23 a roofing and corrugated asbestos estimator under the</p> <p>24 GI bill.</p> <p>25 Q And did L&S -- excuse me -- at the time it started,</p>	<p>1 A Yes.</p> <p>2 Q And when the company began back in the '40s and '50s,</p> <p>3 why was -- why did you use asbestos-containing</p> <p>4 roofing and insulating products?</p> <p>5 A Well, they were manufactured, they were common, they</p> <p>6 were usable. Corrugated asbestos was primarily</p> <p>7 Portland cement, but it had some asbestos fibers in</p> <p>8 it, and those roofs are still on today.</p> <p>9 Q Did L&S -- back through the early '60s, did L&S use a</p> <p>10 large percentage of asbestos-containing insulation</p> <p>11 versus other types of insulation?</p> <p>12 A Well, when I started, I was aware that they had wool</p> <p>13 felt and AIR CELL, those common items that were</p> <p>14 available. And in the early '50s we got acquainted</p> <p>15 with Building Service, and because of a cost factor,</p> <p>16 switched to fiberglass.</p> <p>17 Q When you say you got acquainted with Building</p> <p>18 Service, what -- how did Building Service interact</p> <p>19 with L&S?</p> <p>20 A They were the distributor for the state for Owens</p> <p>21 Corning fiberglass.</p> <p>22 Q And where did L&S purchase, if not all, the vast</p> <p>23 majority of its insulating products in the '50s</p> <p>24 and -- let's say '40s, '50s and '60s, from whom?</p> <p>25 A Well, that was AAA out of Chicago. They provided AIR</p>
Page 6	Page 8
<p>1 did L&S do primarily commercial or residential or</p> <p>2 combination of both?</p> <p>3 A It was so little that we were just in the early</p> <p>4 stages of starting.</p> <p>5 Q Over the years has L&S come to do more commercial,</p> <p>6 more residential, what's the --</p> <p>7 A Mostly commercial, industrial.</p> <p>8 Q Was L&S through -- let's say from the period between</p> <p>9 1947 and -- well, let's take it through 1962, was L&S</p> <p>10 one of the major insulators in the Milwaukee area?</p> <p>11 A No, we were not.</p> <p>12 Q During that period of time how big would the company</p> <p>13 have gotten in the insulation part?</p> <p>14 A I remember when we started they had two or three men</p> <p>15 in Racine. They might have had six or seven in the</p> <p>16 early -- up to the '60s.</p> <p>17 Q Now, part of this case we're here in front of the</p> <p>18 jury on is the plaintiffs are suing L&S claiming</p> <p>19 negligence in the use of asbestos-containing products</p> <p>20 at Motor Castings. And you're aware that's the</p> <p>21 allegation being made; is that correct?</p> <p>22 A Yes, I am.</p> <p>23 Q Let me ask you first of all did L&S at one time use</p> <p>24 some asbestos-containing roofing and insulating</p> <p>25 products?</p>	<p>1 CELL and wool felt. And then when Building Service</p> <p>2 came in, Building Service had a warehouse in</p> <p>3 Milwaukee. And we would use fiberglass whenever we</p> <p>4 could.</p> <p>5 Q Over the course of time for L&S can you estimate a</p> <p>6 percentage that L&S would use asbestos-containing</p> <p>7 insulation as opposed to fiberglass insulation?</p> <p>8 MR. MCCOY: What was that question again?</p> <p>9 BY MR. TERSCHAN:</p> <p>10 Q Over time, over the life of L&S using</p> <p>11 asbestos-containing materials at all, can you give me</p> <p>12 a percentage breakdown as to how much -- what</p> <p>13 percentage of the insulating products you used were</p> <p>14 asbestos and what percentage were something other</p> <p>15 than asbestos?</p> <p>16 MR. MCCOY: Object to foundation.</p> <p>17 BY MR. TERSCHAN:</p> <p>18 Q If you know.</p> <p>19 A That's difficult. It became clear to us that</p> <p>20 fiberglass was so economic and equal in value, that</p> <p>21 it was a process of switching over entirely unless we</p> <p>22 were mandated to apply what they instructed us to</p> <p>23 apply.</p> <p>24 Q Do you have a specific recollection of L&S working at</p> <p>25 Motor Castings?</p>

Page 9

1 **A I'm aware of Motor Castings.**
 2 Q Now, I'm going to show you some books, and I've
 3 marked these as Exhibits 502, 503, 504, and 505.
 4 And I think Counsel have seen these
 5 books before. Bob, you've seen these books before?
 6 MR. MCCOY: Yes.
 7 BY MR. TERSCHAN:
 8 Q Can you tell the jury what these books are just
 9 generally? I don't want you to go through page by
 10 page, but if you can tell us what they are?
 11 **A These were our standard books for listing every**
 12 **contract that we did, no matter how small or how**
 13 **large. Peggy Booth did all of these. That's all her**
 14 **handwriting. And it was a history of jobs.**
 15 Q Now, I'm going to show you what has been marked as
 16 Exhibit No. -- well, you have a copy in front of you,
 17 Exhibit No. 501, and I'm going to represent to you
 18 that's an excerpt of all of the entries out of these
 19 books for Motor Castings. Is that okay?
 20 **A Fine.**
 21 Q Do you -- first of all, do you recognize the entries
 22 as being the type of entries and coming out of your
 23 contract books?
 24 **A Oh, yes. Yes.**
 25 Q You recognize the handwriting --

Page 10

1 **A Yeah.**
 2 Q -- and the information? Have you had an opportunity
 3 to go through this Exhibit 501 to some extent?
 4 **A Just briefly.**
 5 Q The first entries that were in Exhibit 501, in other
 6 words in your contract books, began in 1947 at Motor
 7 Castings. Were you working with L&S Insulation
 8 Company, Inc., in 1947?
 9 **A No.**
 10 Q When did you start with them?
 11 **A January 1950.**
 12 Q Now, the books that you see here and Exhibit 501, so
 13 Exhibits 501 through 505, these would contain all of
 14 the contracts, whether they're asbestos or fiberglass
 15 or roofing, whatever they are is going to be
 16 contained in that books, correct?
 17 **A Yes. But I just want to check something. I thought**
 18 **the years were listed in here somewhere.**
 19 Q Later on they're listed more on the documents.
 20 **A All right. Yes.**
 21 Q Okay. Mr. Borchardt, are you familiar with the term
 22 friable as it relates -- excuse me -- to
 23 asbestos-containing products?
 24 **A Yes.**
 25 Q In case the jury has not yet heard what that means,

Page 11

1 could you tell the jury what the term friable means
 2 in relation to asbestos-containing products?
 3 **A To me it means being able to be airborne.**
 4 Q So if an asbestos product is friable, that means the
 5 particles can become airborne?
 6 **A If you induce them into the air.**
 7 Q Now, within Exhibit No. 501 there are -- and I've
 8 counted them -- I'm going to ask you to make the
 9 assumption there are 49 entries that deal with Motor
 10 Castings. Will you make that assumption with me?
 11 **A Yes.**
 12 Q And again, in going through these, I want you to make
 13 the assumption that 22 of those entries are
 14 specifically dealing with roofing contracts, okay?
 15 **A Yes.**
 16 Q With respect to the roofing contracts and materials
 17 on roofing, whether it be a corrugated asbestos board
 18 or corrugated boards or gravel or whatever, is that
 19 the type of -- excuse me -- is that the type of
 20 product that would be friable once it was installed?
 21 In other words, once the roofing is on, are you going
 22 to get airborne asbestos from that?
 23 **A No.**
 24 MR. MCCOY: Object to foundation, form.
 25 MR. TERSCHAN: If you know.

Page 12

1 THE WITNESS: No.
 2 BY MR. TERSCHAN:
 3 Q And can you tell the jury why that is? Why don't you
 4 get particles of asbestos coming out of that -- those
 5 boards?
 6 **A It's all solid material. You'd have to hammer it,**
 7 **pound it to a pulp in order to obtain any fibers out**
 8 **of there. And I don't know the extent, percentage of**
 9 **fibers. I don't think they'd be very great.**
 10 Q Mr. Borchardt, what I want to do then next is to go
 11 over the remaining 27 contract jobs in that 15-year
 12 period, and we're talking about a period of time in
 13 the contracts here in Exhibit 501 from 1947 was the
 14 first one, the last one shown is 1962. Again, I want
 15 you to make that assumption.
 16 So we've talked about the first 22 are
 17 roofing projects. There are 27 more which would
 18 equal 49. Of that 27, again, I want you to assume
 19 that 11 of the entries deal with something called
 20 corrugated board or asbestos corrugated board that
 21 don't specifically refer to roofing. Of the material
 22 that you went through and were dealing with
 23 corrugated board, again, is that the same type of
 24 corrugated board, whether it be asbestos or not, that
 25 you're talking about on the roofing?

3 (Pages 9 to 12)

Page 13

1 **A Can be used for roofing. It's usually used for**
 2 **sidewall skirting above windows.**
 3 Q Could you tell the jury what that means, sidewall
 4 skirting?
 5 **A Well, it's applied to the outside wall on steel, and**
 6 **it's a protection. And it's corrugated asbestos so**
 7 **it lasts for a long time. And it's inexpensive in**
 8 **relation to brick or any other product that they**
 9 **might choose.**
 10 Q And that would be used on the outside?
 11 **A Exterior.**
 12 Q Would corrugated board always be asbestos-containing?
 13 **A All that I know of had some.**
 14 Q And again, with these -- this corrugated board, to
 15 the best of your knowledge, based upon your
 16 experience, is that the -- any asbestos particles
 17 within that corrugated board, are those friable or
 18 not?
 19 **A As they're contained, they're not friable.**
 20 Q As the board is cut or pulverized, it would --
 21 **A We did all our cutting outside. It's an exterior**
 22 **process. Once it's installed, I do not consider it**
 23 **friable.**
 24 Q So of the 49 entries, 33 we're talking about either
 25 roofing or this corrugated board. It's going to be

Page 14

1 a -- slightly tedious, but I'm going to go through
 2 the remaining 16 entries with you if you will, and
 3 I'll try to work through them as quickly as I can.
 4 First of all, let me ask you before we
 5 get started on this, did L&S insulate the entire
 6 facility at Motor Castings?
 7 **A No. By no means.**
 8 Q What were your -- when we're dealing with the
 9 insulating jobs, what were the jobs done by L&S at
 10 Motor Castings?
 11 **A They all seemed to be minor.**
 12 Q Smaller jobs?
 13 **A Smaller companies. We were not their favorite. We**
 14 **were their -- evidently their favorite roofer, but**
 15 **not their favorite insulator.**
 16 MR. MCCOY: Object to foundation, form, and
 17 move to strike that answer.
 18 BY MR. TERSCHAN:
 19 Q Let me deal first with contract No. 2744. And the
 20 contract numbers are down the left side as you'll
 21 see. Do you have 2744?
 22 **A Yeah, I do. I don't have a year.**
 23 Q I'm going to tell you -- or ask you to assume that
 24 that was in 1948. And it talks about plant one and
 25 steam pipe insulation. Do you see that?

Page 15

1 **A Yes.**
 2 Q Is that something you have any knowledge about, what
 3 was put on at that time?
 4 **A No.**
 5 Q That's because you weren't working for the company?
 6 **A I wasn't working for the company.**
 7 Q Okay. The next entry I want to talk about involves
 8 contract No. 3351. So we're skipping ahead a bit.
 9 **A Yes, I have it.**
 10 Q And that was in 1950, about two years later is the
 11 next insulation --
 12 **A All right.**
 13 Q -- issue. And it talks about water pipe insulation.
 14 Do you see that?
 15 **A Yes.**
 16 Q Do you have any knowledge or information as to
 17 whether that would be asbestos-containing insulation
 18 or not?
 19 **A I know what was being used on water pipe, and that's**
 20 **all I can tell you. We were -- cold water pipe was**
 21 **always wool felt in order to prevent it from**
 22 **sweating. And I'm not aware if there was any**
 23 **fiber -- I doubt that there were any fibers in wool**
 24 **felt. But that's what it says. It says water pipe.**
 25 Q All right. The next one I want to deal with is

Page 16

1 contract No. 3478.
 2 **A Yes.**
 3 Q And it says duct, and this is again -- the date on
 4 this one -- now we have dates; is that correct, right
 5 above the --
 6 **A 1950.**
 7 Q July 17, 1950?
 8 **A Yes.**
 9 Q And it says duct insulation, and it looks like above
 10 core ovens; is that correct?
 11 **A Yes.**
 12 Q Do you know, again, what that would have contained at
 13 that point in time?
 14 MR. MCCOY: Object to foundation.
 15 BY MR. TERSCHAN:
 16 Q If you know.
 17 **A I don't know, but duct insulation was invariably for**
 18 **condensation, and it -- there was no asbestos**
 19 **involved in that.**
 20 MR. MCCOY: Object. Move to strike.
 21 BY MR. TERSCHAN:
 22 Q Next one we'll go to is No. 3604, so we're skipping
 23 ahead. This is the next insulation contract shown,
 24 and can you see the date on that contract?
 25 **A 10/24/50.**

4 (Pages 13 to 16)

Page 17

1 Q And that one's pretty clear as to whether it's
2 asbestos-containing or not, isn't it?
3 A **Yes, it is.**
4 Q What does it say?
5 A **Fiberglass insulation and composition roofing.**
6 Q So that one we know is not asbestos?
7 A **Yes.**
8 Q The next one is 3691, the next page, and this is --
9 does it have a date on that? I think the date's on
10 the previous page at the bottom.
11 A **The number, please?**
12 Q 3691 is the contract number, and the date I think is
13 on the previous page at the bottom. Just the last --
14 A **10/26/50.**
15 Q So we're talking quite a number of months down the
16 road again, is that correct, from the last one?
17 A **These are not jobs that I handled.**
18 Q Right. And that one, could you tell what the
19 description is on that one?
20 A **Tank, hot and cold water insulation.**
21 Q All right. And do you know what the asbestos --
22 whether this was asbestos-containing or not?
23 A **No.**
24 Q Now, this one is somewhat different in that it talks
25 about having been done at plant No. 2; is that

Page 18

1 correct?
2 A **Yes.**
3 Q Do you have knowledge as to whether Motor Castings
4 had more than one site or plant?
5 A **Yes.**
6 Q And where did it have its two plants if you know?
7 A **One was right next to Allis Chalmers, and one was**
8 **further east.**
9 Q Okay. And do you know at all -- have any information
10 as to whether Mr. Lemberger ever worked at plant
11 No. 2?
12 A **I have no knowledge of Mr. Lemberger.**
13 Q You don't know Mr. Lemberger at all really, do you?
14 A **No.**
15 Q All right. The next entry is No. 4084 so we're
16 skipping ahead again. Do you have that entry?
17 A **Yes.**
18 Q Could you tell the jury the date of that entry?
19 A **3/10/52.**
20 Q So we're now almost a year and a half later?
21 A **Yes.**
22 Q And that one again becomes pretty obvious whether
23 it's asbestos or not, isn't it?
24 A **Yeah, it says cork.**
25 Q So that one we know is not?

Page 19

1 A **Not asbestos.**
2 Q Now, I'm going to go to the next entry which is on
3 the next page, 4148.
4 A **Yes.**
5 Q Now, this is in -- what was the date on that entry?
6 A **6/4/52.**
7 Q You were already involved in L&S at this point in
8 time; is that correct?
9 A **In L&S?**
10 Q Working with L&S?
11 A **Oh, yes.**
12 Q And the --
13 MR. MCCOY: Frank, can I have a standing
14 objection to foundation on the questions before his
15 L&S period?
16 MR. TERSCHAN: Sure. Before?
17 MR. MCCOY: Right. And I also have a -- I
18 would also ask for a standing objection, just to save
19 some time, on questions until he becomes part of that
20 insulation division. I don't --
21 MR. TERSCHAN: Okay.
22 MR. MCCOY: I can have that?
23 MR. TERSCHAN: Sure.
24 Q All right. This 4148 deals with -- what was the
25 description on 4148?

Page 20

1 A **Air pipe insulation.**
2 Q And again, is that an -- would that be an
3 asbestos-containing insulation for an air pipe?
4 A **I can only assume that it would be for condensation**
5 **or sound deadening. It certainly shouldn't have had**
6 **any asbestos in it.**
7 Q All right. Based upon your own knowledge at the time
8 and what -- working with the company, if you were --
9 if the company was insulating an air pipe at a
10 factory like this, would they use an
11 asbestos-containing product?
12 A **No.**
13 Q The next one is 4199 is the next insulating entry.
14 A **Yes.**
15 Q Could you give the jury the date on this one?
16 A **8/11/52.**
17 Q And this indicates duct insulation; is that correct?
18 A **That's correct.**
19 Q And again, based upon your knowledge of working with
20 L&S at the time, if it was duct insulation and the
21 facts were like this, would that be
22 asbestos-containing insulation?
23 A **Unlikely. It would be insulated for condensation,**
24 **and there were no products with asbestos used that**
25 **way.**

5 (Pages 17 to 20)

Page 21	Page 23
<p>1 Q The next one I want to go to --</p> <p>2 MR. MCCOY: Make an additional objection on</p> <p>3 that to the lack of any foundation about personal</p> <p>4 knowledge as to the materials on that particular job.</p> <p>5 BY MR. TERSCHAN:</p> <p>6 Q The next one I want to go to is No. 4545. You have</p> <p>7 that?</p> <p>8 A Yes.</p> <p>9 Q And this is -- what is the description -- first of</p> <p>10 all, what's the date on this one?</p> <p>11 A 10/8/53.</p> <p>12 Q So more than a year later is the next insulating</p> <p>13 project at Motor Castings, correct, from the last</p> <p>14 one?</p> <p>15 A Yes.</p> <p>16 Q And what is the description on that one?</p> <p>17 A Air duct insulation.</p> <p>18 Q Now, this was at a time you were clearly already</p> <p>19 involved heavily with the insulating part of L&S?</p> <p>20 A Started.</p> <p>21 Q Okay. And again, based upon your own personal</p> <p>22 knowledge, was L&S utilizing asbestos-containing</p> <p>23 insulation to insulate air ducts back at that period</p> <p>24 of time?</p> <p>25 A No, we were then purchasing fiberglass.</p>	<p>1 later, year and a half later? Previous project</p> <p>2 having been in February of '54, this one being in</p> <p>3 August of '55, so it's about a year and a half later?</p> <p>4 A Yes.</p> <p>5 Q And what was being insulated at the time?</p> <p>6 A It says air compression insulation, which was</p> <p>7 probably a cold water line to the air compressor</p> <p>8 which was common.</p> <p>9 Q And would that be asbestos-containing?</p> <p>10 MR. MCCOY: Same objection --</p> <p>11 BY MR. TERSCHAN:</p> <p>12 Q If you know.</p> <p>13 MR. MCCOY: -- again on foundation for lack</p> <p>14 of knowledge about the materials being used on that</p> <p>15 job.</p> <p>16 THE WITNESS: I'll assume it was wool felt.</p> <p>17 BY MR. TERSCHAN:</p> <p>18 Q And the assumption you're making is based upon what</p> <p>19 you were doing at the time -- what L&S was doing at</p> <p>20 the time?</p> <p>21 A Usable materials that we had in stock.</p> <p>22 Q All right. The next one is 5422 so we're skipping</p> <p>23 ahead quite a ways. Do you have that?</p> <p>24 A Yes.</p> <p>25 Q And again, if you could tell the jury the date on</p>
Page 22	Page 24
<p>1 Q Okay. Next one I want to turn to is 4646 on the next</p> <p>2 page. You have that?</p> <p>3 A Yes.</p> <p>4 Q And the date on that one?</p> <p>5 A 2/26/54.</p> <p>6 Q And what is the description as to what they're</p> <p>7 insulating?</p> <p>8 A Turbo vac and pipe insulation.</p> <p>9 Q And it actually said piping insulation; is that</p> <p>10 correct?</p> <p>11 A Piping insulation, yes.</p> <p>12 Q And again, based upon your own personal knowledge, is</p> <p>13 this something that you would have used</p> <p>14 asbestos-containing product for?</p> <p>15 A Unlikely. Just -- it looks like a little repair job</p> <p>16 of some sort.</p> <p>17 Q The next one, next insulating job is No. 5083, a</p> <p>18 number of pages ahead.</p> <p>19 A Yes.</p> <p>20 Q And that's -- the date on that one is actually at the</p> <p>21 bottom of the previous page. And could you give the</p> <p>22 date on --</p> <p>23 A 8/10/55.</p> <p>24 Q So again the next -- from the last project, the next</p> <p>25 project would have been almost -- more than a year</p>	<p>1 this one?</p> <p>2 A 8/17/56.</p> <p>3 Q So about a year later is the next insulation job?</p> <p>4 A Yes.</p> <p>5 Q And what is that one for?</p> <p>6 A Cold water pipe insulation.</p> <p>7 Q And did -- at that period of time did L&S use</p> <p>8 asbestos-containing insulation on cold water pipe</p> <p>9 insulation?</p> <p>10 A No, it would have been wool felt or glass.</p> <p>11 Q The next one I want to turn to is 6120. Do you have</p> <p>12 that?</p> <p>13 A Yes.</p> <p>14 Q The date on that one?</p> <p>15 A 10/15/58.</p> <p>16 Q So that's almost two years later -- more than two</p> <p>17 years later; is that correct?</p> <p>18 A Yes.</p> <p>19 Q And what is the description on this one?</p> <p>20 A Miscellaneous insulation.</p> <p>21 Q And do you have any idea what that might be?</p> <p>22 A No.</p> <p>23 Q Then the next to last one is 6337?</p> <p>24 A Yes.</p> <p>25 Q And the date on that one again?</p>

Page 25	Page 27
<p>1 A 6/19/59.</p> <p>2 Q So the following year. And what's the description?</p> <p>3 A It says blower and core oven insulation.</p> <p>4 Q And again, this one is at plant two; is that correct?</p> <p>5 A Yes.</p> <p>6 Q And do you know at that period of time what that insulation would have been?</p> <p>7</p> <p>8 A I'm unfamiliar with that one.</p> <p>9 Q All right. And then the final entry for L&S Insulation at Motor Castings is No. 7195. Do you find that one?</p> <p>10</p> <p>11</p> <p>12 A Yes.</p> <p>13 Q And this was insulation for -- well, first of all the date?</p> <p>14</p> <p>15 A 8/16/62.</p> <p>16 Q So almost three years later?</p> <p>17 A Yes.</p> <p>18 Q And what was being insulated there?</p> <p>19 A It says core oven insulation.</p> <p>20 Q And again, this was at plant No. 2; is that correct?</p> <p>21 A Yes.</p> <p>22 Q All right. When you were doing these insulation products -- not products, projects, Mr. Borchardt, who called out what to use? In other words, would L&S make that decision, or would Motor Castings make</p>	<p>1 plants, over -- over the years when you have been with the company?</p> <p>2</p> <p>3 A Some. We've had a variety of customers.</p> <p>4 Q There is a claim by one of the witnesses that the insulation put in in year one would essentially have been in there forever --</p> <p>5</p> <p>6 MR. MCCOY: Object to form --</p> <p>7</p> <p>8 BY MR. TERSCHAN:</p> <p>9 Q -- at the end of the -- whenever the insulation was taken out. I'm just asking you to make that assumption for the moment. I know it's not something you're aware of. I'm asking you to make the assumption that that is what a witness has testified to or will testify to.</p> <p>10</p> <p>11</p> <p>12 Given your experience and the type of plant and the type of insulation we're using here, is that at all likely?</p> <p>13</p> <p>14 MR. MCCOY: Object to form and foundation and not disclosed on his opinion.</p> <p>15</p> <p>16 THE WITNESS: Those type of plants changed radically for any number of reasons. This type of plant had a lot of vibration in it, a lot of pounding, castings, things would get damaged. It's just natural they would change.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 BY MR. TERSCHAN:</p>
Page 26	Page 28
<p>1 the decision on what product to use at a particular job?</p> <p>2</p> <p>3 MR. MCCOY: Object to foundation.</p> <p>4 BY MR. TERSCHAN:</p> <p>5 Q If you know.</p> <p>6 A In this case it was Motor Castings.</p> <p>7 Q And how do you know that?</p> <p>8 A Because there's no architect involved. We certainly didn't select the materials, and I can only assume that from these records.</p> <p>9</p> <p>10</p> <p>11 Q So in this type of setting, this type of job L&S would not call the type of insulation that they wanted or what they were going to be putting in?</p> <p>12</p> <p>13</p> <p>14 MR. MCCOY: Object to the form.</p> <p>15</p> <p>16 THE WITNESS: Absolutely not. If it was a school, the school would tell us what to do.</p> <p>17</p> <p>18 BY MR. TERSCHAN:</p> <p>19 Q Now, are you familiar with -- you've indicated you're generally familiar with the Motor Castings plant and the insulating at Motor Castings; is that correct?</p> <p>20</p> <p>21</p> <p>22 MR. MCCOY: Object to form.</p> <p>23</p> <p>24 THE WITNESS: I'm aware of the plant.</p> <p>25</p> <p>26 BY MR. TERSCHAN:</p> <p>27 Q And did L&S do similar type of insulating work at -- similar types, in other words, foundries and casting</p>	<p>1 Q Do you know -- first of all, do you know whether L&S was the only insulator at Motor Castings?</p> <p>2</p> <p>3 A I don't think we were the only one, no.</p> <p>4</p> <p>5 MR. MCCOY: Object. Move to strike. Lack of foundation.</p> <p>6</p> <p>7 BY MR. TERSCHAN:</p> <p>8 Q Do you have any idea of any other insulators who worked at Motor Castings? I mean do you know one way or the other?</p> <p>9</p> <p>10 A I don't know any names, but we were the smallest firm in the city.</p> <p>11</p> <p>12 Q During that period of time?</p> <p>13</p> <p>14 A During that period of time.</p> <p>15</p> <p>16 MR. MCCOY: Object. Move to strike. Nonresponsive.</p> <p>17</p> <p>18 BY MR. TERSCHAN:</p> <p>19 Q Now, from the records here, L&S last worked at Motor Castings in 1962. That's what the records show; is that correct?</p> <p>20</p> <p>21</p> <p>22 A Yes.</p> <p>23 Q The last -- L&S last worked at the plant No. 1 from these records in 1958; is that right?</p> <p>24</p> <p>25</p> <p>26 A Yes.</p> <p>27 Q To the best of your knowledge, did L&S Insulation Company, Inc., ever go back to Motor Castings for any</p>

Page 29	Page 31
<p>1 reason?</p> <p>2 A If it isn't listed in the book, we weren't there.</p> <p>3 Q Do you have any idea who did Motor Castings'</p> <p>4 insulation work after 1962 into the '70s and '80s?</p> <p>5 A No knowledge.</p> <p>6 Q Mr. Borchardt, how did you first become aware of the</p> <p>7 potential hazards of asbestos-containing products?</p> <p>8 A I became very friendly with some of the pipe coverers</p> <p>9 that worked for us and others in trades, the</p> <p>10 union's -- son of the union -- head of the union.</p> <p>11 And they're the ones that told me about</p> <p>12 asbestos-related things in powerhouses, that it was</p> <p>13 dangerous. And it all came from the silicon studies</p> <p>14 that the union asked for.</p> <p>15 Q And do you know when you first became aware of the</p> <p>16 potential dangers of asbestos-containing products?</p> <p>17 Was that sometime after 1962?</p> <p>18 A I'd say so, yes.</p> <p>19 Q In the period of time -- and I apologize if I've gone</p> <p>20 over this -- but in the period of time between 1947</p> <p>21 and 1962, if you purchased an asbestos-containing</p> <p>22 insulating product, who would you have gotten that</p> <p>23 product from? In other words, who was your supplier</p> <p>24 for that type of product?</p> <p>25 A Triple A out of Chicago, Johns Manville, Keasby and</p>	<p>1 Q When did L&S stop using asbestos-containing</p> <p>2 insulation of any sort?</p> <p>3 A When it was no longer manufactured, '70, '71.</p> <p>4 Q After that there was no use by L&S at all?</p> <p>5 A It was not made.</p> <p>6 Q The employees in the insulation -- at least the</p> <p>7 insulation part of L&S Insulation Company, Inc., of</p> <p>8 which you were a part for some period of time, worked</p> <p>9 with insulation literally every day; is that correct?</p> <p>10 A Not necessarily.</p> <p>11 Q After early '70s, 1971, 1972, when the products --</p> <p>12 the asbestos-containing products were no longer</p> <p>13 utilized, what other -- what products did you use at</p> <p>14 that point in time?</p> <p>15 A Well, the glass was primary. There were other newer</p> <p>16 ceramics and things that were available, but that's</p> <p>17 generally when the new plastic fittings started</p> <p>18 coming in and made everything so simple.</p> <p>19 Q Was L&S Insulation Company, Inc., ever involved in</p> <p>20 asbestos removal or abatement?</p> <p>21 A No.</p> <p>22 Q Now, that, as I understand it, is a very lucrative</p> <p>23 business. Why did L&S not become involved in that?</p> <p>24 A I didn't want anything to do with it. It didn't</p> <p>25 seem -- the money wasn't the factor. You had to</p>
Page 30	Page 32
<p>1 Madison was corrugated asbestos roofing, flat stock.</p> <p>2 A variety of companies.</p> <p>3 Q Any others that you can think of?</p> <p>4 A Did I mention Triple A out of Chicago?</p> <p>5 Q You did. Did any of the distributors, any of the</p> <p>6 individuals who actually distributed these products</p> <p>7 to you or sold these products to you, ever provide</p> <p>8 you with any sort of warning or advice that the</p> <p>9 products were somehow dangerous?</p> <p>10 MR. MCCOY: Object to foundation.</p> <p>11 THE WITNESS: Not to my knowledge.</p> <p>12 BY MR. TERSCHAN:</p> <p>13 Q Did any of the manufacturers of the products that you</p> <p>14 utilized throughout the course of time -- let's take</p> <p>15 it up through 1962 -- let's take it up through 1972.</p> <p>16 Did any of those manufacturers ever notify L&S</p> <p>17 Insulation Company, Inc., again to the best of your</p> <p>18 knowledge, of any potential hazards with the use of</p> <p>19 these products?</p> <p>20 A Well, in the earlier years, no, because we had no</p> <p>21 contact with the manufacturers. In the later years,</p> <p>22 yes, they protected themselves.</p> <p>23 Q When did that start happening if you know?</p> <p>24 A I'm not aware of the time. Not the time frame, I'm</p> <p>25 not aware of the individual start of that.</p>	<p>1 incorporate in another state. I stayed away from it.</p> <p>2 Q Were you concerned about -- at any point in time</p> <p>3 after the early '70s were you concerned about the</p> <p>4 dangers involved with the removal process?</p> <p>5 A I thought about it. I'd start another series of men</p> <p>6 that would end up with another series of lawsuits on</p> <p>7 asbestosis.</p> <p>8 Q So would it be correct to say that any insulation or</p> <p>9 repairs or renovation or removal or new insulation</p> <p>10 which was done at Motor Castings from 1962 forward</p> <p>11 was done by someone other than L&S Insulation</p> <p>12 Company, Inc.?</p> <p>13 A Absolutely.</p> <p>14 Q Is the Motor Castings plant still in existence to the</p> <p>15 best of your knowledge?</p> <p>16 A I don't know.</p> <p>17 Q By the mid 1980s was it common knowledge that</p> <p>18 potential -- or that asbestos-containing products</p> <p>19 were a potential health hazard?</p> <p>20 A Oh, yes.</p> <p>21 Q By that point in time had OSHA stepped into the</p> <p>22 picture and made regulations to the best of your</p> <p>23 knowledge?</p> <p>24 A Yes.</p> <p>25 Q And were you regulated by OSHA as well?</p>

Page 33

1 **A We didn't remove.**
 2 THE COURT REPORTER: I'm sorry?
 3 THE WITNESS: We did not remove asbestos so
 4 we weren't under the jurisdiction.
 5 BY MR. TERSCHAN:
 6 Q Based upon your observations in the mid 1980s, were
 7 there special precautions taken when asbestos
 8 products or potential asbestos products were removed
 9 from a building?
 10 **A Unbelievable. They had to create tunnels, go in one**
 11 **time, completely dress in mask and shower, do your**
 12 **work, go out the other way, do the same thing again.**
 13 **It was horrendous.**
 14 Q And were these -- was this process something you
 15 actually observed?
 16 **A Oh, I've observed it, just didn't want anything to do**
 17 **with it.**
 18 Q Mr. Borchardt, in your opinion in the 1980s would it
 19 be negligent of someone to remove asbestos or
 20 potential asbestos-containing products without taking
 21 precautions?
 22 MR. MCCOY: Object to form, foundation.
 23 THE WITNESS: I was under the understanding
 24 they could be fined.
 25 BY MR. TERSCHAN:

Page 34

1 Q Certainly a dangerous practice to do it without
 2 precaution?
 3 **A Absolutely.**
 4 MR. MCCOY: Same objection.
 5 MR. TERSCHAN: That's all I have.
 6 MR. MCCOY: Did you need to take a break
 7 for a moment, or should I go ahead?
 8 THE WITNESS: No, go ahead, please.
 9 EXAMINATION
 10 BY MR. MCCOY:
 11 Q Mr. Borchardt, my name is Bob McCoy, and I'm here on
 12 behalf of the family of Steve Lemberger.
 13 **A Yes.**
 14 Q I just wanted to see how often you had visited the
 15 core oven area at the Motor Castings facility.
 16 **A I can't tell you.**
 17 Q Do you ever remember seeing the core oven area at
 18 Motor Castings?
 19 **A Oh, I'm sure I saw it, but I was -- I started out as**
 20 **a roofing and corrugating estimator and then**
 21 **transitioned into insulation. I can't tell you that**
 22 **time frame, but it overlapped. I could easily**
 23 **deliver some corrugated asbestos products to a job**
 24 **and have some insulation products on my truck.**
 25 Q But you don't have any specific recollection of what

Page 35

1 the core oven area at Motor Castings looked like; is
 2 that accurate?
 3 **A I have a vague image of the core oven area.**
 4 Q Now, you mentioned that you were in the roofing part
 5 of the L&S company in -- when you started in 1950; is
 6 that correct?
 7 **A Correct.**
 8 Q And there was also a separate division for the
 9 insulation work; is that correct?
 10 **A We were all one company, L&S Roofing and Insulation.**
 11 Q But there was two separate basic divisions, right?
 12 **A Yes.**
 13 Q Okay. And your transition into the insulation area
 14 started in 1956; is that accurate?
 15 **A I'm not going to say that that was exact, because**
 16 **there was some company changes in there. The company**
 17 **broke up into L&S Insulation and L&S Construction,**
 18 **and I sort of helped out with both of them.**
 19 Q Mr. Borchardt, this is some testimony that you have
 20 given earlier. This is back in 1998, about ten years
 21 ago.
 22 **A All right.**
 23 Q I'm going to turn to page 45, and I'm at line four.
 24 Question, when did you become involved
 25 with the insulation division?

Page 36

1 Answer, it was a gradual thing. It
 2 probably occurred from '56 through '59 period. I did
 3 some work for both divisions.
 4 During that transition period?
 5 Answer, during that transition period,
 6 yes.
 7 Were you asked those questions and did
 8 you give those answers back in 1998?
 9 **A I'm sure I did.**
 10 Q And so back in 1998 you said that the transition from
 11 the roofing to the insulation division for you began
 12 in 1956, right?
 13 **A If that's what it says. I don't have the -- I've**
 14 **given, I don't know hundreds, but I've given a lot of**
 15 **depositions, and I can't -- I defer to any of them.**
 16 **They're all correct.**
 17 Q Okay. I know it's hard to remember back a long time
 18 ago so ...
 19 **A Especially at this time.**
 20 Q Right. All right. So anyways there's two jobs that
 21 were talked about, and I'm going to ask that these be
 22 marked as Plaintiff's Exhibit 1 and 2 at the
 23 deposition here.
 24 MR. TERSCHAN: You want them to be 1 and 2?
 25 MR. MCCOY: Yeah, for the deposition.

9 (Pages 33 to 36)

Page 37	Page 39
<p>1 MR. TERSCHAN: This is for trial, you 2 understand. 3 MR. MCCOY: Right. I understand. 4 (Exhibits 1 and 2 marked for 5 identification.) 6 BY MR. MCCOY: 7 Q The first document, Plaintiff's Exhibit 1, has a job 8 that I've marked out, job No. 3478. 9 A Yes. 10 Q And that particular job was done, according to the 11 ledger, in July 17 of 1950; is that right? 12 A That's what it says. 13 Q And it was done at Motor Castings, and its 14 description of the job is duct insulation above core 15 ovens? 16 A Yes. 17 Q Then in this time period, 1950, you were with the 18 roofing division of L&S, right? 19 A That's true. 20 Q So this would not have been a job where you were 21 doing the estimating of the job; is that right? 22 A I did not. 23 Q And you did not order the materials on this job; is 24 that right? 25 A No, I did not.</p>	<p>1 Q And you were also not the person who ordered the 2 materials on this job, right? 3 A No, I did not. 4 Q And you also were not there to see these materials 5 actually being put in, right? 6 A Correct. 7 Q And you did not go and inspect what materials were 8 in -- put in on this particular job, right? 9 A Correct. 10 Q You can put that one aside. And just to clarify, at 11 some point in time your stock ownership of L&S 12 Insulation became almost 100 percent, right? 13 A Could have been. It isn't now. 14 Q Well, your -- 15 A At one time I purchased the -- all the remaining 16 outstanding stock. 17 Q 100 percent? 18 A Yes. 19 Q And then later you gave some of it to your family so 20 your family had -- between yourself and your family 21 it was about 99 percent, right? 22 A I'll assume that's correct. 23 Q And you're of course still president of the company 24 today, right? 25 A Yes.</p>
Page 38	Page 40
<p>1 Q And you did not observe the materials being installed 2 on this job; is that right? 3 A Other than what it says here. 4 Q Well, my question was you were in the insulation 5 division, you weren't out there observing these job 6 materials, right? 7 A No. I mean I did not. 8 Q Okay. And you didn't go and do an inspection after 9 this job to see what was put in because, again, this 10 wasn't your area, right? 11 A Correct. 12 Q All right. Now let me turn to the -- another item 13 here and this is Exhibit No. 2. This one is job No. 14 4199? 15 A Yes. 16 Q And this job is done August 11 of 1952, right? 17 A Correct. 18 Q Also at Motor Castings Company, right? 19 A Yes. 20 Q And it's for duct insulation, right? 21 A Yes. 22 Q So again in 1952 you were with the roofing division, 23 and you were not the person who would have estimated 24 this job, right? 25 A That's correct, I did not.</p>	<p>1 Q And on the work that was done by L&S, to your 2 knowledge the insulation work that might have 3 contained asbestos, there was no warnings that L&S 4 gave to the workers; is that correct? 5 A To the workers? 6 Q Yes. 7 A They were all aware of what asbestos was. 8 Q My question though, Mr. Borchardt, was L&S did not 9 give warnings to the workers; is that right? 10 MR. TERSCHAN: Let me object -- 11 THE WITNESS: They warned me. 12 BY MR. MCCOY: 13 Q I'm sorry? 14 A They warned me. 15 Q Who warned you? 16 A The workers. 17 Q Was there somebody from Motor Castings that -- 18 A Not Motor Castings. I'm talking about our men. 19 Q The men working for L&S? 20 A Yes. 21 Q But no one from Motor Castings warned you about 22 asbestos, right? 23 A No. 24 Q Okay. You made a mention about a product called wool 25 felt I believe?</p>

Page 41

1 A Yes, sir.
 2 Q Okay. And today I think I heard you tell the jury
 3 that that was not an asbestos-containing product,
 4 right?
 5 A I said to my knowledge it was just layers of wool
 6 felt cylindrically wrapped around a pipe until it
 7 formed a section of covering.
 8 Q Today you said it was not asbestos-containing, right?
 9 A To my knowledge it isn't, no.
 10 Q Mr. Borchardt, I want to go to your deposition that
 11 you gave in 1996 (sic) again. And I'm on page 45,
 12 line eight.
 13 The question is asked, what other
 14 suppliers for the asbestos insulation products did
 15 L&S use?
 16 And your answer was AIR CELL and wool
 17 felt were purchased from Triple A out of Chicago.
 18 Did you -- were you asked that
 19 question and did you give that answer in '96?
 20 A That's correct.
 21 Q So back in '96 you identified wool felt as an
 22 asbestos insulation product, right?
 23 A No, it's just a product that we bought from AAA.
 24 Q Well, you said it - you said it was one of the
 25 asbestos insulation products that L&S used in '96,

Page 42

1 right?
 2 A I just stated that to my knowledge there is no
 3 asbestos in wool felt.
 4 Q But you were -- you did give that answer to the
 5 question about asbestos insulation products?
 6 A I'm sorry, I generalized.
 7 Q So what you said in '96 was a mistake, is that --
 8 A I've always known that there was no -- I never
 9 associated asbestos with wool felt. They're two
 10 different products for two different reasons; one for
 11 anti-sweat on cold water, and the others were for
 12 heat loss which contained asbestos. It was
 13 inadvertent to say that it contained it back then
 14 but --
 15 Q All right, that's fine.
 16 A -- I acknowledge that that could have been said.
 17 Q Okay, that's fine. We'll move on. Almost done.
 18 The L&S Insulation company grew in
 19 size to ultimately employ 50 or 60 employees, right?
 20 A Correct.
 21 Q And at least for the insulation work, they were all
 22 hired from the asbestos workers Local No. 19 in
 23 Milwaukee, right?
 24 A Correct.
 25 Q At some point in time L&S Insulation had additional

Page 43

1 records beyond the four books that we saw earlier
 2 today, right? And I'm talking about records of work
 3 done and materials used on jobs.
 4 A Yeah, files. There was a file for every one of
 5 these.
 6 Q Each job had a file?
 7 A Every job had a file.
 8 Q And those files were entrusted to your attorney,
 9 Chester Niebler; is that right?
 10 A That's correct.
 11 Q But at some point in time they disappeared where they
 12 couldn't be located, right?
 13 A I'd say so. I don't have them.
 14 Q You don't know what happened from Mr. Niebler's
 15 office, right?
 16 A No, I don't. They were given to whoever needed them
 17 or wanted to look at them.
 18 Q But you had trust in Mr. Niebler, your attorney for
 19 L&S, to take care of them, right?
 20 A Yes.
 21 Q And today they're not available, right?
 22 A No, they aren't.
 23 Q And --
 24 All right. That's all the questions I
 25 think I have. Thank you.

Page 44

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 2 MR. TERSCHAN: Anyone else?
 3 MS. MCLEROY: No questions.
 4 MR. TERSCHAN: Just a couple follow-up,
 5 Mr. Borchardt.
 6 EXAMINATION
 7 BY MR. TERSCHAN:
 8 Q When did L&S grow to the 50 to 60 workers? I
 9 understand it was probably gradual, but when did you
 10 get up to that level? Was it after 1962?
 11 A When the roofing and corrugated diminished, pipe
 12 covering took off, fiberglass became acceptable, we
 13 started bidding bigger and bigger jobs, and that's --
 14 it was just a natural thing.
 15 Q Do you remember about when that was?
 16 A '60s -- no, '70s.
 17 Q And the files entrusted that are part of these -- or
 18 the files on the contracts that are part of these
 19 books, that's a different attorney, different set of
 20 attorneys many years ago; is that correct, not me?
 21 A I don't understand.
 22 Q When you entrusted the files --
 23 A Oh, you mean Mr. Niebler.
 24 Q Right.
 25 A Oh, yes. That was our corporate attorney that helped

11 (Pages 41 to 44)

Videotape Deposition of ELMER BORCHARDT, 7/2/08

Page 45	Page 47
<p>1 us originate.</p> <p>2 Q And that was probably --</p> <p>3 A That's 40 --</p> <p>4 MR. TERSCHAN: Okay. That's all I have.</p> <p>5 MR. MCCOY: One final question.</p> <p>6 EXAMINATION</p> <p>7 BY MR. MCCOY:</p> <p>8 Q L&S Insulation did not provide any warnings about</p> <p>9 asbestos to Motor Castings to your knowledge; is that</p> <p>10 correct?</p> <p>11 MR. TERSCHAN: I'm going to make an</p> <p>12 objection as improper recross. Go ahead.</p> <p>13 THE WITNESS: I thought I answered that.</p> <p>14 BY MR. MCCOY:</p> <p>15 Q And the answer was?</p> <p>16 A Did we provide them?</p> <p>17 Q Yes.</p> <p>18 A No.</p> <p>19 MR. MCCOY: That's all the questions.</p> <p>20 Thank you.</p> <p>21 (Discussion held off the record.)</p> <p>22 MR. MCCOY: Plaintiff's Exhibits 1 and 2</p> <p>23 are going to be given to the court reporter to be</p> <p>24 attached to the transcript, as is Borchardt Exhibit</p> <p>25 No. 501 that was used by counsel for L&S.</p>	<p>1 STATE OF WISCONSIN)</p> <p>2) SS:</p> <p>3 MILWAUKEE COUNTY)</p> <p>4</p> <p>5 I, Tammy R. O'Neal, RPR and Notary</p> <p>6 Public in and for the State of Wisconsin, do hereby</p> <p>7 certify that the preceding deposition was recorded by</p> <p>8 me and reduced to writing under my personal</p> <p>9 direction.</p> <p>10 I further certify that said deposition</p> <p>11 was taken at W268 N2161 Shooting Star Road, Pewaukee,</p> <p>12 Wisconsin, on the 2nd day of July, 2008, commencing</p> <p>13 at 10:00 a.m. and concluding at 11:09 a.m.</p> <p>14 I further certify that I am not a</p> <p>15 relative or employee or attorney or counsel of any of</p> <p>16 the parties, or a relative or employee of such</p> <p>17 attorney or counsel, or financially interested</p> <p>18 directly or indirectly in this action.</p> <p>19 In witness whereof, I have hereunto</p> <p>20 set my hand and affixed my seal of office on this 7th</p> <p>21 day of July, 2008.</p> <p>22</p> <p>23 <u>TAMMY R. O'NEAL, RPR</u></p> <p>24 Notary Public</p> <p>25 My commission expires 9/11/11.</p>
Page 46	
<p>1 The books, the four ledger books, just</p> <p>2 to identify these, are not being attached to the</p> <p>3 deposition transcript. Those are exhibits from the</p> <p>4 5/12/03 deposition of Mr. Borchardt, Exhibit No. 1A,</p> <p>5 2A, 3A, and 4A.</p> <p>6 MR. TERSCHAN: And rather than remark those</p> <p>7 books we are -- I called them on the transcript and</p> <p>8 we agreed we would call them 502, 503, 504, and 505.</p> <p>9 And if necessary we'll mark them. I don't think it's</p> <p>10 going to become necessary, because we're not going to</p> <p>11 show them to anyone else. Maybe shown but not given</p> <p>12 to anyone else.</p> <p>13 MR. MCCOY: Mr. Terschan will retain</p> <p>14 custody of the four books.</p> <p>15 MR. TERSCHAN: That's correct.</p> <p>16 (Deposition concluded at 11:09 a.m.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

12 (Pages 45 to 47)

A				
AAA 7:25 41:23 abatement 31:20 able 11:3 above-enti... 2:2 Absolutely 26:15 32:13 34:3 acceptable 44:12 accurate 35:2 35:14 acknowledge 42:16 acquainted 7:14,17 action 2:2 47:17 additional 21:2 42:25 address 4:9 advice 30:8 affixed 47:19 ago 35:21 36:18 44:20 agreed 46:8 ahead 15:8 16:23 18:16 22:18 23:23 34:7,8 45:12 air 7:13,25 11:6 20:1,3 20:9 21:17 21:23 23:6 23:7 41:16 airborne 11:3 11:5,22 al 1:7 allegation 6:21 Allis 18:7 AMERICAN 1:7 Andrew 3:5 answer 14:17 36:1,5 41:16,19 42:4 45:15 answered	45:13 answers 36:8 anti-sweat 42:11 anyway 5:13 anyways 36:20 apologize 29:19 Appeared 2:13 2:16,19,23 3:4,7,10 applied 13:5 apply 8:22,23 architect 26:8 area 5:1 6:10 34:15,17 35:1,3,13 38:10 asbestos 5:23 7:6,7 8:14 8:15 10:14 11:4,17,22 12:4,20,24 13:6,16 16:18 17:6 17:21 18:23 19:1 20:6 20:24 30:1 31:20 33:3 33:7,8,19 34:23 40:3 40:7,22 41:14,22,25 42:3,5,9,12 42:22 45:9 asbestosis 32:7 asbestos-c... 6:19,24 7:3 7:10 8:6,11 10:23 11:2 13:12 15:17 17:2,22 20:3,11,22 21:22 22:14 23:9 24:8 29:7,16,21 31:1,12 32:18 33:20 41:3,8 asbestos-r...	29:12 Ashland 2:12 aside 39:10 asked 29:14 36:7 41:13 41:18 asking 27:10 27:12 associated 5:22 42:9 ASSOCIATES 3:2 assume 12:18 14:23 20:4 23:16 26:9 39:22 assumption 11:9,10,13 12:15 23:18 27:11,13 attached 3:20 3:21 45:24 46:2 attending 5:8 attorney 3:22 43:8,18 44:19,25 47:14,16 attorneys 44:20 August 23:3 38:16 available 7:14 31:16 43:21 Avenue 3:6 aware 6:20 7:12 9:1 15:22 26:22 27:12 29:6 29:15 30:24 30:25 40:7 a.m. 1:14 2:8 2:8 46:16 47:12,12	41:21 42:13 BANKS 3:2 based 13:15 20:7,19 21:21 22:12 23:18 33:6 basic 35:11 began 7:2 10:6 36:11 behalf 2:13 2:16,19,23 3:4,7,10 34:12 believe 40:25 Bendix 2:19 best 13:15 28:24 30:17 32:15,22 beyond 43:1 bidding 44:13 big 6:12 bigger 44:13 44:13 bill 5:24 birth 4:11 bit 5:15 15:8 blower 25:3 board 11:17 12:20,20,23 12:24 13:12 13:14,17,20 13:25 boards 11:18 12:5 Bob 9:5 34:11 book 29:2 books 9:2,5,5 9:8,11,19 9:23 10:6 10:12,16 43:1 44:19 46:1,1,7,14 Booth 9:13 Borchardt 1:12 2:1 4:2,8 10:21 12:10 25:23 29:6 33:18 34:11 35:19 40:8 41:10 44:5 45:24 46:4	bottom 17:10 17:13 22:21 bought 41:23 BOWMAN 3:8 BRADY 3:5 break 34:6 breakdown 8:12 brick 13:8 briefly 10:4 broke 35:17 BROOKE 3:8 building 7:15 7:17,18 8:1 8:2 33:9 business 4:9 31:23
				C
				C 2:10 3:1 call 26:12 46:8 called 4:2 12:19 25:24 40:24 46:7 care 43:19 CASCINO 2:11 case 1:6 6:17 10:25 26:6 casting 26:25 castings 6:20 8:25 9:1,19 10:7 11:10 14:6,10 18:3 21:13 25:10,25 26:6,19,20 27:23 28:2 28:8,18,25 29:3 32:10 32:14 34:15 34:18 35:1 37:13 38:18 40:17,18,21 45:9 CELL 7:13 8:1 41:16 cement 7:7 ceramics 31:16 certainly 20:5 26:8
B				
		B 3:17 back 7:2,9 21:23 28:25 35:20 36:8 36:10,17		

34:1	32:12 35:5	44:25	cylindrically	17:24 42:10
certify 47:6	35:10,16,16	correct 4:20	41:6	42:10 44:19
47:9,13	38:18 39:23	5:4,9 6:21	<hr/>	44:19
Chalmers 18:7	42:18	10:16 16:4	D	difficult
change 27:24	completely	16:10 17:16	damaged 27:23	8:19
changed 27:20	33:11	18:1 19:8	dangerous	diminished
changes 35:16	composition	20:17,18	29:13 30:9	44:11
Chapter 2:3	17:5	21:13 22:10	34:1	direction
check 10:17	compression	24:17 25:4	dangers 29:16	47:8
Chester 43:9	23:6	25:20 26:20	32:4	directly
Chicago 2:12	compressor	28:19 31:9	date 4:11	47:17
7:25 29:25	23:7	32:8 35:6,7	16:3,24	disappeared
30:4 41:17	concerned	35:9 36:16	17:9,12	43:11
choose 13:9	32:2,3	38:11,17,25	18:18 19:5	disclosed
CIRCUIT 1:1	concluded	39:6,9,22	20:15 21:10	27:19
city 28:11	46:16	40:4 41:20	22:4,20,22	Discussion
claim 27:4	concluding	42:20,24	23:25 24:14	45:21
claiming 6:18	2:8 47:12	43:10 44:20	24:25 25:14	distributed
clarify 39:10	condensation	45:10 46:15	dates 16:4	30:6
clear 8:19	16:18 20:4	corrugated	date's 17:9	distributor
17:1	20:23	5:21,23 7:6	David 3:8	7:20
clearly 21:18	consider	11:17,18	day 2:7 31:9	distributors
CLVS 3:11	13:22	12:20,20,23	47:11,20	30:5
cold 15:20	Construction	12:24 13:6	deadening	division
17:20 23:7	35:17	13:12,14,17	20:5	19:20 35:8
24:6,8	contact 30:21	13:25 30:1	deal 11:9	35:25 36:11
42:11	contain 10:13	34:23 44:11	12:19 14:19	37:18 38:5
COLLEEN 1:3	contained	corrugating	15:25	38:22
combination	10:16 13:19	34:20	dealing 11:14	divisions
6:2	16:12 40:3	cost 7:15	12:22 14:8	35:11 36:3
come 6:5	42:12,13	counsel 9:4	deals 19:24	document 3:19
coming 9:22	contract 9:12	45:25 47:14	decision	3:19 37:7
12:4 31:18	9:23 10:6	47:16	25:25 26:1	documents
commencing	12:11 14:19	counted 11:8	Defendants	10:19
2:8 47:11	14:20 15:8	COUNTY 1:1	1:8 2:3	doing 4:16
commercial	16:1,23,24	47:2	defer 36:15	23:19,19
2:19 6:1,5	17:12	couple 44:4	deliver 34:23	25:22 37:21
6:7	contracts	course 8:5	deposition	doubt 15:23
commission	10:14 11:14	30:14 39:23	1:12 2:1	dress 33:11
47:24	11:16 12:13	court 1:1	5:3 36:23	duct 16:3,9
common 7:5,13	44:18	33:2 45:23	36:25 41:10	16:17 20:17
23:8 32:17	copies 3:21	coverers 5:21	46:3,4,16	20:20 21:17
companies	3:21	29:8	47:6,9	37:14 38:20
14:13 30:2	copy 9:16	covering 41:7	depositions	ducts 21:23
company 2:23	core 16:10	44:12	36:15	duly 4:3
3:7 4:17,19	25:3,19	create 33:10	description	<hr/>
5:16 6:12	34:15,17	crew 5:21,21	17:19 19:25	E
7:2 10:8	35:1,3	custody 46:14	21:9,16	E 2:10,10 3:1
15:5,6 20:8	37:14	customers	22:6 24:19	3:1,13,17
20:9 27:2	cork 18:24	27:3	25:2 37:14	earlier 30:20
28:25 30:17	Corning 7:21	cut 13:20	detail 5:7	35:20 43:1
31:7,19	corporate	cutting 13:21	different	early 6:3,16

7:9,14
 31:11 32:3
easily 34:22
east 3:6 18:8
economic 8:20
eight 41:12
either 13:24
Ellen 3:2
Elmer 1:12
 2:1 4:2,8
EMILE 3:2
employ 42:19
employee
 47:14,15
employees
 31:6 42:19
entire 14:5
entirely 8:21
entries 9:18
 9:21,22
 10:5 11:9
 11:13 12:19
 13:24 14:2
entrusted
 43:8 44:17
 44:22
entry 15:7
 18:15,16,18
 19:2,5
 20:13 25:9
equal 8:20
 12:18
ERT 2:17
Especialy
 36:19
essentially
 27:5
Estate 1:4
estimate 4:15
 8:5
estimated
 38:23
estimating
 37:21
estimator
 5:23 34:20
et 1:7
evidently
 14:14
exact 35:15
EXAMINATION
 4:5 34:9

44:6 45:6
examined 4:3
excerpt 9:18
excuse 5:25
 10:22 11:19
Exhibit 3:18
 3:21 9:16
 9:17 10:3,5
 10:12 11:7
 12:13 36:22
 37:7 38:13
 45:24 46:4
exhibits 3:20
 3:21 9:3
 10:13 37:4
 45:22 46:3
existence
 32:14
experience
 13:16 27:15
expires 47:24
extent 10:3
 12:8
exterior
 13:11,21

F

facility 14:6
 34:15
factor 7:15
 31:25
factory 20:10
facts 20:21
familiar
 10:21 26:18
 26:19
family 34:12
 39:19,20,20
favorite
 14:13,14,15
February 23:2
felt 7:13 8:1
 15:21,24
 23:16 24:10
 40:25 41:6
 41:17,21
 42:3,9
fiber 15:23
fiberglass
 7:16,21 8:3
 8:7,20
 10:14 17:5

21:25 44:12
fibers 7:7
 12:7,9
 15:23
Fifth 3:9
file 43:4,6,7
files 43:4,8
 44:17,18,22
final 25:9
 45:5
financially
 47:16
find 25:11
fine 9:20
 42:15,17
fined 33:24
firm 28:10
first 4:3
 6:23 9:21
 10:5 12:14
 12:16 14:4
 14:19 21:9
 25:13 28:1
 29:6,15
 37:7
fittings
 31:17
flat 30:1
following
 25:2
follows 4:4
follow-up
 44:4
forever 27:6
form 11:24
 14:16 26:14
 26:21 27:7
 27:18 33:22
formed 41:7
forward 32:10
foundation
 8:16 11:24
 14:16 16:14
 19:14 21:3
 23:13 26:3
 27:18 28:5
 30:10 33:22
foundries
 26:25
four 35:23
 43:1 46:1
 46:14

frame 30:24
 34:22
Frank 2:21
 3:5 19:13
friable 10:22
 11:1,4,20
 13:17,19,23
friendly 29:8
front 6:17
 9:16
full 4:7
further 18:8
 47:9,13

G

G 2:11 3:5
General 3:10
generalized
 42:6
generally 9:9
 26:19 31:17
GI 5:24
give 8:11
 20:15 22:21
 36:8 40:9
 41:19 42:4
given 27:15
 35:20 36:14
 36:14 43:16
 45:23 46:11
glass 24:10
 31:15
go 5:6 9:9
 10:3 12:10
 14:1 16:22
 19:2 21:1,6
 28:25 33:10
 33:12 34:7
 34:8 38:8
 39:7 41:10
 45:12
going 5:6 9:2
 9:15,17
 10:15 11:8
 11:12,21
 13:25 14:1
 14:23 19:2
 26:13 35:15
 35:23 36:21
 45:11,23
 46:10,10
Gordon 2:14

gotten 6:13
 29:22
gradual 36:1
 44:9
gravel 11:18
great 5:7
 12:9
grew 42:18
grow 44:8

H

H 3:17 4:8
half 18:20
 23:1,3
hammer 12:6
hand 47:19
handled 17:17
handwriting
 9:14,25
happened
 43:14
happening
 30:23
hard 36:17
hazard 32:19
hazards 29:7
 30:18
head 29:10
health 5:6,7
 32:19
heard 10:25
 41:2
heat 42:12
heavily 21:19
held 45:21
helped 35:18
 44:25
Hennes 3:4
hereunto
 47:18
hired 42:22
history 5:16
 9:14
Holming 3:7
home 5:3
Honeywell
 2:19
horrendous
 33:13
hot 17:20
hundreds
 36:14

<p>I</p> <p>idea 24:21 28:7 29:3</p> <p>identifica... 37:5</p> <p>identified 3:18 41:21</p> <p>identify 46:2</p> <p>Illinois 2:12 5:19</p> <p>image 35:3</p> <p>improper 45:12</p> <p>inadvertent 42:13</p> <p>incorporate 32:1</p> <p>indicated 26:18</p> <p>indicates 20:17</p> <p>indirectly 47:17</p> <p>individual 30:25</p> <p>Individually 1:3</p> <p>individuals 30:6</p> <p>induce 11:6</p> <p>industrial 6:7</p> <p>inexpensive 13:7</p> <p>information 10:2 15:16 18:9</p> <p>inspect 39:7</p> <p>inspection 38:8</p> <p>installed 11:20 13:22 38:1</p> <p>instance 2:3</p> <p>instructed 8:22</p> <p>insulate 14:5 21:23</p> <p>insulated 20:23 23:5 25:18</p> <p>insulating</p>	<p>6:24 7:4,23 8:13 14:9 20:9,13 21:12,19 22:7,17 26:20,24 29:22</p> <p>insulation 2:23 4:15 4:17,22 5:16,19 6:13 7:10 7:11 8:7,7 10:7 14:25 15:11,13,17 16:9,17,23 17:5,20 19:20 20:1 20:3,17,20 20:22 21:17 21:23 22:8 22:9,11 23:6 24:3,6 24:8,9,20 25:3,7,10 25:13,19,22 26:12 27:5 27:9,16 28:24 29:4 30:17 31:2 31:6,7,7,9 31:19 32:8 32:9,11 34:21,24 35:9,10,13 35:17,25 36:11 37:14 38:4,20 39:12 40:2 41:14,22,25 42:5,18,21 42:25 45:8</p> <p>insulator 14:15 28:2</p> <p>insulators 6:10 28:7</p> <p>interact 7:18</p> <p>interested 47:16</p> <p>International 2:20</p> <p>invariably</p>	<p>16:17</p> <p>involved 16:19 19:7 21:19 26:8 31:19,23 32:4 35:24</p> <p>involves 15:7</p> <p>issue 15:13</p> <p>issues 5:6,8</p> <p>item 38:12</p> <p>items 7:13</p> <p>J</p> <p>J 2:17</p> <p>January 4:18 10:11</p> <p>job 3:19,19 21:4 22:15 22:17 23:15 24:3 26:2 26:11 34:23 37:7,8,10 37:14,20,21 37:23 38:2 38:5,9,13 38:16,24 39:2,8 43:6 43:7</p> <p>jobs 9:14 12:11 14:9 14:9,12 17:17 36:20 43:3 44:13</p> <p>Johns 29:25</p> <p>July 1:13 2:7 16:7 37:11 47:11,20</p> <p>jurisdiction 33:4</p> <p>jury 4:7,11 5:15 6:18 9:8 10:25 11:1 12:3 13:3 18:18 20:15 23:25 41:2</p> <p>K</p> <p>Keasby 29:25</p> <p>know 8:18 11:25 12:8 13:13 15:19</p>	<p>16:12,16,17 17:6,21 18:6,9,13 18:25 23:12 25:6 26:5,7 27:11 28:1 28:1,8,10 29:15 30:23 32:16 36:14 36:17 43:14</p> <p>knowledge 13:15 15:2 15:16 18:3 18:12 20:7 20:19 21:4 21:22 22:12 23:14 28:24 29:5 30:11 30:18 32:15 32:17,23 40:2 41:5,9 42:2 45:9</p> <p>known 42:8</p> <p>KONKEL 2:14</p> <p>L</p> <p>L 3:2</p> <p>lack 21:3 23:13 28:4</p> <p>large 7:10 9:13</p> <p>lasts 13:7</p> <p>Laurie 2:17</p> <p>LAW 2:11</p> <p>lawsuits 32:6</p> <p>layers 41:5</p> <p>ledger 37:11 46:1</p> <p>Leech 2:14</p> <p>left 14:20</p> <p>Lemberger 1:3 1:4 18:10 18:12,13 34:12</p> <p>let's 6:8,9 7:24 30:14 30:15</p> <p>level 44:10</p> <p>life 5:2 8:10</p> <p>line 5:11 23:7 35:23 41:12</p>	<p>listed 10:18 10:19 29:2</p> <p>listing 9:11</p> <p>literally 31:9</p> <p>little 5:15 6:3 22:15</p> <p>lived 4:25</p> <p>living 4:14</p> <p>LLC 2:19 3:2</p> <p>LLP 3:8</p> <p>Local 42:22</p> <p>located 43:12</p> <p>long 4:16,16 4:25 13:7 36:17</p> <p>longer 31:3 31:12</p> <p>look 43:17</p> <p>looked 35:1</p> <p>looks 16:9 22:15</p> <p>loss 42:12</p> <p>lot 27:22,22 36:14</p> <p>lucrative 31:22</p> <p>Lutz 3:8</p> <p>Lyle 3:11</p> <p>L&S 2:23 4:15 4:17,22 5:16,18,20 5:25 6:1,5 6:8,9,18,23 7:9,9,19,22 8:5,6,10,24 10:7 14:5,9 19:7,9,10 19:15 20:20 21:19,22 23:19 24:7 25:9,25 26:11,24 28:1,17,21 28:24 30:16 31:1,4,7,19 31:23 32:11 35:5,10,17 35:17 37:18 39:11 40:1 40:3,8,19 41:15,25</p>
--	---	--	--	--

42:18,25	45:7,14,19	28:14 42:17	28:4,14	originate
43:19 44:8	45:22 46:13		30:10 33:22	45:1
45:8,25	McLeRoy 2:17	N	40:10	originated
M	44:3	N 2:10 3:1,8	objection	5:18
M 3:13	mean 28:8	3:13,13	5:11,12	OSHA 32:21,25
Madison 30:1	38:7 44:23	name 4:7	19:14,18	OTJEN 2:17
major 6:10	means 10:25	34:11	21:2 23:10	outside 13:5
majority 7:23	11:1,3,4	names 28:10	34:4 45:12	13:10,21
making 23:18	13:3 14:7	natural 27:24	observations	outstanding
mandated 8:22	men 6:14 32:5	44:14	33:6	39:16
manufactured	40:18,19	necessarily	observe 38:1	oven 25:3,19
7:5 31:3	mention 30:4	31:10	observed	34:15,17
manufacturers	40:24	necessary	33:15,16	35:1,3
30:13,16,21	mentioned	46:9,10	observing	ovens 16:10
Manville	35:4	need 34:6	38:5	37:15
29:25	mid 32:17	needed 43:16	obtain 12:7	overlapped
mark 3:11	33:6	negligence	obvious 18:22	34:22
46:9	Milwaukee 1:1	6:19	occupation	Owens 7:20
marked 3:22	2:15,18,22	negligent	4:13	owned 4:19
9:3,15	3:3,6 4:10	33:19	occurred 36:2	owner 4:22,24
36:22 37:4	5:1 6:10	NESS 2:21	office 43:15	owners 5:19
37:8	8:3 42:23	never 42:8	47:19	ownership
mask 33:11	47:2	new 31:17	OFFICES 2:11	39:11
material 12:6	Minneapolis	32:9	Oh 9:24 19:11	O'Neal 1:18
12:21	3:9	newer 31:15	32:20 33:16	2:5 47:4,22
materials	Minnesota 3:9	Niebler 43:9	34:19 44:23	P
8:11 11:16	minor 14:11	43:18 44:23	44:25	P 2:10,10 3:1
21:4 23:14	Miscellaneous	Niebler's	okay 9:19	3:1
23:21 26:9	24:20	43:14	10:21 11:14	page 3:18 9:9
37:23 38:1	mistake 42:7	Nonresponsive	15:7 18:9	9:10 17:8
38:6 39:2,4	moment 27:11	28:15	19:21 21:21	17:10,13
39:7 43:3	34:7	North 2:15,18	22:1 35:13	19:3 22:2
matter 9:12	money 31:25	2:22 3:3	36:17 38:8	22:21 35:23
Mayfair 3:3	months 17:15	Notary 2:5	40:24 41:2	41:11
McCoy 2:11	Motor 6:20	47:4,23	42:17 45:4	pages 22:18
3:15,16	8:25 9:1,19	notice 2:4	Old 2:15	part 4:23
5:11 8:8,16	10:6 11:9	notify 30:16	once 11:20,21	6:13,17
9:6 11:24	14:6,10	number 17:11	13:22	19:19 21:19
14:16 16:14	18:3 21:13	17:12,15	ones 29:11	31:7,8 35:4
16:20 19:13	25:10,25	22:18 27:21	one's 17:1	44:17,18
19:17,22	26:6,19,20	numbers 14:20	operate 4:15	particles
21:2 23:10	28:2,8,17	N2161 1:16	operation	11:5 12:4
23:13 26:3	28:25 29:3	2:6 47:10	5:18	13:16
26:14,21	32:10,14	O	opinion 27:19	particular
27:7,18	34:15,18	O 3:13	33:18	21:4 26:1
28:4,14	35:1 37:13	oath 4:3	opportunity	37:10 39:8
30:10 33:22	38:18 40:17	object 8:16	10:2	parties 47:15
34:4,6,10	40:18,21	11:24 14:16	opposed 8:7	Peggy 9:13
34:11 36:25	45:9	16:14,20	order 12:7	percent 39:12
37:3,6	Motors 3:10	26:3,14,21	15:21 37:23	39:17,21
40:12 45:5	move 14:17	27:7,18	ordered 39:1	percentage
	16:20 28:4		original 3:20	

7:10 8:6,12	39:11 42:25	8:13 10:23	19:14,19	33:19
8:13,14	43:11	11:2 20:24	36:7 43:24	removed 33:8
12:8	Portland 7:7	25:23,23	44:3 45:19	renovation
period 6:8,12	potential	29:7,16	quickly 14:3	32:9
12:12,12	29:7,16	30:6,7,9,13	quite 17:15	repair 22:15
19:15 21:23	30:18 32:18	30:19 31:11	23:23	repairs 32:9
24:7 25:6	32:19 33:8	31:12,13		Reported 1:18
28:12,13	33:20	32:18 33:8	<hr/>	reporter 33:2
29:19,20	pound 12:7	33:8,20	R	45:23
31:8 36:2,4	pounding	34:23,24	R 1:18 2:5,10	represent
36:5 37:17	27:23	41:14,25	2:14,21 3:1	9:17
permanent	powerhouses	42:5,10	47:4,22	Representa...
4:25	29:12	project 21:13	Racine 6:15	1:4
person 38:23	practice 34:1	22:24,25	radically	reserved 5:13
39:1	precaution	23:1	27:21	residence
personal 1:4	34:2	projects	really 18:13	4:25
21:3,21	precautions	12:17 25:23	reason 29:1	residential
22:12 47:7	33:7,21	protected	reasons 27:21	6:1,6
Pewaukee 1:17	preceding	30:22	42:10	respect 11:16
2:7 47:10	47:6	protection	recognize	retain 46:13
picture 32:22	Present 3:11	13:6	9:21,25	retained 3:22
pipe 5:21	president	provide 30:7	recollection	right 10:20
14:25 15:13	39:23	45:8,16	8:24 34:25	15:12,25
15:19,20,24	pretty 17:1	provided 7:25	record 45:21	16:4 17:18
20:1,3,9	18:22	Public 2:5	recorded 47:6	17:21 18:7
22:8 24:6,8	prevent 5:8	47:5,23	records 26:10	18:15 19:17
29:8 41:6	15:21	pulp 12:7	28:17,18,22	19:24 20:7
44:11	previous	pulverized	43:1,2	23:22 25:9
piping 22:9	17:10,13	13:20	recross 45:12	25:22 28:22
22:11	22:21 23:1	purchase 7:22	reduced 47:7	35:11,22
Plaintiff 1:5	previously	purchased	refer 12:21	36:12,20,20
2:13,16	3:22	29:21 39:15	referred 3:21	37:3,11,18
plaintiffs	primarily 6:1	41:17	regulated	37:21,24
6:18	7:6	purchasing	32:25	38:2,6,10
Plaintiff's	primary 31:15	21:25	regulations	38:12,16,18
36:22 37:7	probably 5:13	pursuant 2:3	32:22	38:20,24
45:22	23:7 36:2	2:4	relates 10:22	39:2,5,8,12
plant 14:24	44:9 45:2	put 15:3 27:5	relation 11:2	39:21,24
17:25 18:4	PROCEEDINGS	38:9 39:5,8	13:8	40:9,22
18:10 25:4	4:1	39:10	relative	41:4,8,22
25:20 26:19	process 8:21	putting 26:13	47:14,15	42:1,15,19
26:22 27:16	13:22 32:4		relevance	42:23 43:2
27:22 28:21	33:14		5:12	43:9,12,15
32:14	product 11:4	<hr/>	remaining	43:19,21,24
plants 18:6	11:20 13:8	Q	12:11 14:2	44:24
27:1,20	20:11 22:14	QUARLES 3:5	39:15	road 1:16 2:6
plastic 31:17	26:1 29:22	question 8:8	remark 46:6	3:3 17:16
please 4:7	29:23,24	35:24 38:4	remember 6:14	47:10
17:11 34:8	40:24 41:3	40:8 41:13	34:17 36:17	Robert 2:11
point 16:13	41:22,23	41:19 42:5	44:15	roofer 14:14
19:7 31:14	products 6:19	45:5	removal 31:20	roofing 5:19
32:2,21	6:25 7:4,23	questioning	32:4,9	5:20,23
		questions	remove 33:1,3	

6:24 7:4	Shooting 1:16	SS 47:1	15:22	28:6,16
10:15 11:14	2:6 47:10	stages 6:4	switched 7:16	30:12 33:5
11:16,17,21	show 9:2,15	standard 1:7	switching	33:25 34:5
12:17,21,25	28:18 46:11	9:11	8:21	36:24 37:1
13:1,25	shower 33:11	standing	sworn 4:3	40:10 44:2
17:5 30:1	shown 12:14	19:13,18	Systems 2:19	44:4,7 45:4
34:20 35:4	16:23 46:11	Star 1:16 2:6	S.C 2:14,17	45:11 46:6
35:10 36:11	sic 41:11	47:10		46:13,15
37:18 38:22	side 14:20	start 5:17	T	testified 4:4
44:11	sidewall 13:2	10:10 30:23	T 3:13,17	27:13
roofs 7:8	13:3	30:25 32:5	take 6:9	testify 27:14
RPR 1:18 2:5	silicon 29:13	started 5:20	30:14,15	testimony
47:4,22	similar 26:24	5:22,25	34:6 43:19	35:19
	26:25	6:14 7:12	taken 2:2	Thank 43:25
S	simple 31:18	14:5 21:20	27:10 33:7	45:20
S 2:10 3:1,17	sir 41:1	31:17 34:19	47:10	they'd 12:9
SAFRAN 2:14	site 18:4	35:5,14	talk 15:7	thing 33:12
SAMSTER 2:14	six 6:15	44:13	talked 12:16	36:1 44:14
satellite	size 42:19	starting 6:4	36:21	things 27:23
5:18	skipping 15:8	state 1:2 2:5	talking 12:12	29:12 31:16
save 19:18	16:22 18:16	7:20 32:1	12:25 13:24	think 5:12
saw 34:19	23:22	47:1,5	17:15 40:18	9:4 12:9
43:1	skirting 13:2	stated 42:2	43:2	17:9,12
says 15:24,24	13:4	Statutes 2:4	talks 14:24	28:3 30:3
16:3,9	slightly 14:1	stayed 32:1	15:13 17:24	41:2 43:25
18:24 23:6	small 5:18	steam 14:25	Tammy 1:18	46:9
25:3,19	9:12	steel 13:5	2:5 47:4,22	Third 2:15
36:13 37:12	Smaller 14:12	STEINLE 2:21	Tank 17:20	thought 10:17
38:3	14:13	stepped 32:21	tedious 14:1	32:5 45:13
school 26:16	smallest	Steve 34:12	tell 4:7,11	three 5:21
26:16	28:10	Steven 1:4	5:15 9:8,10	6:14 25:16
seal 47:19	sold 30:7	stock 23:21	11:1 12:3	time 5:25
section 41:7	solid 12:6	30:1 39:11	13:3 14:23	6:12,23 8:5
see 10:12	somebody	39:16	15:20 17:18	8:10 12:12
14:21,25	40:17	stop 31:1	18:18 23:25	13:7 15:3
15:14 16:24	somewhat	Street 2:15	26:16 34:16	16:13 19:8
34:14 38:9	17:24	2:18,22 3:9	34:21 41:2	19:19 20:7
39:4	son 29:10	4:10	ten 35:20	20:20 21:18
seeing 34:17	sorry 33:2	strike 14:17	term 10:21	21:24 23:5
seen 9:4,5	40:13 42:6	16:20 28:4	11:1	23:19,20
select 26:9	sort 22:16	28:14	Terschman 2:21	24:7 25:6
separate 35:8	30:8 31:2	studies 29:13	2:21 3:14	28:12,13
35:11	35:18	suing 6:18	3:15,22 4:6	29:19,20
series 32:5,6	sound 20:5	Suite 2:15,18	5:14 8:9,17	30:14,24,24
Service 7:15	South 2:12	2:22 3:3,9	9:7 11:25	31:8,14
7:18,18 8:1	3:9 4:10	supplier	12:2 14:18	32:2,21
8:2	Spahr 3:2	29:23	16:15,21	33:11 34:22
Services 3:4	special 33:7	suppliers	19:16,21,23	36:17,19
set 44:19	specific 8:24	41:14	21:5 23:11	37:17 39:11
47:19	34:25	sure 19:16,23	23:17 26:4	39:15 42:25
setting 26:11	specifically	34:19 36:9	26:17,23	43:11
seven 6:15	11:14 12:21	sweating	27:8,25	today 7:8

39:24 41:2 41:8 43:2 43:21 told 29:11 trades 29:9 transcript 3:20,21,21 4:1 45:24 46:3,7 transition 35:13 36:4 36:5,10 transitioned 34:21 trial 5:9 37:1 Triple 29:25 30:4 41:17 truck 34:24 true 37:19 trust 43:18 try 14:3 tunnels 33:10 Turbo 22:8 turn 22:1 24:11 35:23 38:12 two 5:21 6:14 15:10 18:6 24:16,16 25:4 35:11 36:20 42:9 42:10 type 9:22 11:19,19 12:23 26:11 26:11,12,24 27:15,16,20 27:21 29:24 types 7:11 26:25	33:23 unfamiliar 25:8 union 29:10 29:10,14 union's 29:10 usable 7:6 23:21 use 6:19,23 7:3,9 8:3,6 20:10 24:7 25:24 26:1 30:18 31:4 31:13 41:15 usually 13:1 utilized 30:14 31:13 utilizing 21:22	warehouse 8:2 warned 40:11 40:14,15,21 warning 30:8 warnings 40:3 40:9 45:8 wasn't 5:22 15:6 31:25 38:10 water 2:18,22 15:13,19,20 15:24 17:20 23:7 24:6,8 42:11 way 20:25 28:8 33:12 ways 23:23 Wednesday 1:13 WEIR 2:17 went 12:22 weren't 15:5 29:2 33:4 38:5 we'll 16:22 42:17 46:9 we're 5:3,6 6:17 12:12 13:24 14:8 15:8 16:22 17:15 18:15 18:20 23:22 27:16 46:10 we've 12:16 27:3 whereof 47:18 windows 13:2 Wisconsin 1:2 1:17 2:4,6 2:7,15,18 2:22 3:3,6 3:6 47:1,5 47:11 witness 2:2 4:2 12:1 23:16 26:15 26:22 27:13 27:20 30:11 33:3,23 34:8 40:11 45:13 47:18 witnesses	27:4 wool 7:12 8:1 15:21,23 23:16 24:10 40:24 41:5 41:16,21 42:3,9 words 10:6 11:21 25:24 26:25 29:23 work 14:3 26:24 29:4 33:12 35:9 36:3 40:1,2 42:21 43:2 worked 18:10 28:8,17,21 29:9 31:8 workers 40:4 40:5,9,16 42:22 44:8 working 4:17 8:24 10:7 15:5,6 19:10 20:8 20:19 40:19 World 2:15 wrapped 41:6 writing 47:7 W268 1:16 2:6 47:10	0 05-CV-010416 1:6
	V			1
	vac 22:8 vague 35:3 value 8:20 VAN 2:17 variety 27:3 30:2 vast 7:22 VAUGHAN 2:11 Vehicle 2:19 versus 7:11 vibration 27:22 Videographer 3:11 Videotape 1:12 2:1 visited 34:14 vs 1:6			13:19,20 28:21 36:22 36:24 37:4 37:7 45:22 1A 46:4 10/15/58 24:15 10/24/50 16:25 10/26/50 17:14 10/8/53 21:11 10:00 1:14 2:8 47:12 100 39:12,17 11 12:19 38:16 11:09 2:8 46:16 47:12 1110 2:15 12/9/25 4:12 1200 3:3 15-year 12:11 150 3:9 16 14:2 17 16:7 37:11 19 42:22 1936 5:18 1947 6:9 10:6 10:8 12:13 29:20 1948 14:24 1950 4:18,19 10:11 15:10 16:6,7 35:5 37:11,17 1952 38:16,22 1956 35:14 36:12 1958 28:22 1962 6:9 12:14 28:18 29:4,17,21 30:15 32:10 44:10 1971 31:11 1972 30:15
U ultimately 42:19 Unbelievable 33:10 understand 31:22 37:2 37:3 44:9 44:21 understanding	W wall 13:5 want 9:9 10:17 11:12 12:10,14,18 15:7,25 21:1,6 22:1 24:11 31:24 33:16 36:24 41:10 wanted 26:13 34:14 43:17			

31:11
1980s 32:17
 33:6,18
1996 41:11
1998 35:20
 36:8,10

2

2 3:19,20
 17:25 18:11
 25:20 36:22
 36:24 37:4
 38:13 45:22
2A 46:5
2nd 1:13 2:7
 47:11
2/26/54 22:5
2008 1:13 2:7
 47:11,20
215 2:22
22 11:13
 12:16
220 2:12
27 12:11,17
 12:18
2744 14:19,21
290 3:3

3

3A 46:5
3/10/52 18:19
3000 3:9
309 2:22
33 13:24
3351 15:8
34 3:15
3478 3:19
 16:1 37:8
3604 16:22
3691 17:8,12
37 3:19
38 3:19

4

4 3:14
4A 46:5
40 45:3
40s 7:2,24
405 2:15
4084 18:15
411 3:6
4148 19:3,24

19:25
4199 3:19
 20:13 38:14
44 3:15
45 3:16 35:23
 41:11
4545 21:6
4646 22:1
49 11:9 12:18
 13:24

5

5/12/03 46:4
50 4:23 42:19
 44:8
50s 7:2,14,23
 7:24
501 3:21 9:17
 10:3,5,12
 10:13 11:7
 12:13 45:25
502 3:21 9:3
 46:8
503 9:3 46:8
504 9:3 46:8
505 3:21 9:3
 10:13 46:8
5083 22:17
53202 2:18,22
53202-4497
 3:6
53203 2:15
53226 3:3
54 23:2
5422 23:22
55 23:3
55402 3:9
56 36:2
59 36:2

6

6/19/59 25:1
6/4/52 19:6
60 4:23 42:19
 44:8
60s 6:16 7:9
 7:24 44:16
60607 2:12
6120 24:11
616 4:10
6337 24:23

7

7th 47:19
70 31:3
70s 29:4
 31:11 32:3
 44:16
700 2:18
71 31:3
7195 25:10

8

8/10/55 22:23
8/11/52 20:16
8/16/62 25:15
8/17/56 24:2
80s 29:4
800 2:18
804 2:3
89th 4:10

9

9/11/11 47:24
96 41:19,21
 41:25 42:7
99 39:21